IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9002 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

S.T. KARMACHARI MANDAL

Appearance:

1. Special Civil Application No. 9002 of 1992
MR HARDIK C RAWAL for Petitioner No. 1
NOTICE SERVED for Respondents No. 1-2

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 31/01/2002

ORAL JUDGEMENT

Heard learned advocate Mr.Hardik C. Raval for the petitioner Corporation. By way of this petition, the petitioner has challenged the award dated 28th July, 1992

made by the Labour Court, Ahmedabad in Reference (LCA) No. 74 of 1987. Under the said award, the labour court, Ahmedabad has allowed the reference of the second party workman in part and the order of dismissal passed against the second party workman has been set aside and he has been ordered to be reinstated in service with continuity of service without back wages for the intervening period and one annual increment of the workman has been ordered to be stopped with future effect. The petition was filed by the petitioner on 22nd December, 1992 wherein this court has issued rule and has also granted ad.interim relief in terms of para 8(B) subject to compliance of section 17B of the Industrial Disputes Act, 1947. The respondent workman has been served with the notice of rule issued by this court but has not appeared before this Court either in person or through any advocate.

During the course of hearing, learned advocate Mr. Raval appearing for the petitioner corporation has submitted that at the relevant point of time, the respondent had completed only three years' service and has committed serious acts of misconduct including dishonesty, misappropriation of reissuing the tickets and, therefore, the petitioner corporation has rightly passed the order of dismissal against the respondent workman. He has also submitted that before the labour court, the respondent workman has admitted the legality, validity and propriety of the inquiry as well as the findings recorded by the inquiry officer but the labour court has erred in exercising the powers under section 11A of the Industrial Disputes Act, 1947 in modifying the order of punishment and granting reinstatement to the respondent workman. Alternatively, he has suggested that looking to the gravity of misconduct committed by the respondent workman established before the labour court, some serious punishment ought to have been imposed by the labour court and, therefore, he has submitted that looking to the findings given by the labour court, some serious punishment may be imposed against the respondent considering the gravity of misconduct proved before the labour court.

I have considered the submissions made by Mr.Raval, the learned advocate for the petitioner. I have also perused the award passed by the labour court. In the award, the labour court has clearly observed that the workman has issued the tickets which were once issued to the passengers travelling in the bus and, thereby, has committed the misconduct which is serious in nature. Before the labour court, the findings recorded by the inquiry officer were not challenged by the workman.

Meaning thereby, the findings were admitted by the workman and, therefore, the labour court while exercising the powers under section 11A of the Industrial Disputes Act, 1947, has imposed the punishment of stoppage of one annual increment with future effect, which, according to my opinion, is not sufficient, considering the gravity of misconduct committed by the respondent workman. According to my opinion, mere denial of back wages is also not a sufficient punishment because the question of denial would arise only if it is proved that the workman is entitled for the same. In the instant case, in the facts of the case, the workman is not entitled to back wages as a matter of right because the order of punishment has been modified by the labour court and, therefore, such denial of back wages cannot be considered as a punishment. Therefore, considering the over all facts and circumstances of the case, considering the order dated 22nd December, 1992 passed by this court wherein rule has been issued and ad.interim relief has been granted subject to compliance of section 17B of the Industrial Disputes Act, 1992, after lapse of such a long period, the workman concerned must have been reinstated in view of the order for compliance of section 17B of the Industrial Disputes Act, 1947, according to my opinion, it would be just and proper to impose some more punishment over and above the punishment of stoppage of one annual increment with future effect. Therefore, according to my opinion, it would be just and proper to impose punishment of stoppage of five annual increments of the respondent workman with future effect over and above the punishment of stoppage of one annual increment with future effect ordered by the labour court under the impugned award. To that extent, the award of the labour court is required to be modified.

Therefore, accordingly, the award dated 28.7.1992 made by the labour court, Ahmedabad in Reference (LCA) No. 74 of 1987 is modified and over and above the stoppage of one annual increment with future effect as ordered by the labour court, it is ordered by this Court that further five annual increments of the respondent workman be stopped with future effect. The award made by the labour court in aforesaid reference shall stand modified accordingly. Rule is made absolute in terms indicated hereinabove with no order as to costs.

31.1.2002. (H.K. Rathod,J.)
Vyas